

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MICHAEL P CANDLER
Claimant

DAN SHERMAN ENTERPRISES LLC
Employer

APPEAL 22A-UI-20035-DG

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/24/19
Claimant: Appellant (6)**

PL 116-136 Sec. 2107 – Pandemic Emergency Unemployment Compensation (PEUC)
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(5) – Wages
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 29, 2022 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) because he failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits.

Notice of hearing was mailed to the party’s last known address of record for an in-person hearing to be held on February 2, 2023 in Cedar Rapids, Iowa. The appellant/claimant failed to appear for the hearing and did not participate in the hearing. The claimant’s name was called three times, and he had not called in to request a continuance. Based on the appellant’s failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the appellant not participating in the hearing?

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The appellant did not respond to the hearing notice or request a postponement of the hearing as required by the hearing notice and did not appear for the hearing.

As a courtesy to the appellant the record was left open for a minimum of 20 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Each two-party hearing is generally allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 20 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that the appellant was overpaid Federal Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$1,179.00.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

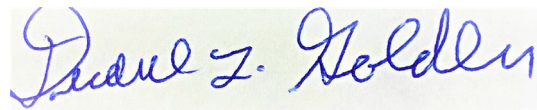
Agency rule Iowa Admin. Code r. 871-26.14(7) provides that if the appealing party has not responded to a notice of telephone hearing by providing the Appeals Bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3).

The appellant appealed the unemployment insurance decision but failed to participate in the hearing. The appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

The appellant has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed below.

DECISION:

The September 29, 2022, (reference 02) unemployment insurance decision that held claimant was overpaid Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits remains in effect, as the appellant is in default.



Duane L. Golden
Administrative Law Judge

February 6, 2023
Decision Dated and Mailed

dlg/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.